Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Implementation of Section 224 of the Act;	)	WC Docket No. 07-245
Amendment of the Commission's Rules and	)	
Policies Governing Pole Attachments	)	

COMMENTS OF THE FIBERTOWER CORPORATION

FiberTower Corporation, pursuant to Section 1.415 of the Commission's Rules, hereby submits its comments in response to the Commission's *Notice of Proposed Rulemaking* in the above-captioned proceeding ("*NPRM*").[1]

FiberTower provides backhaul and other fixed wireless services to mobile carriers, and government agencies and their contractors, in the United States ("U.S."). FiberTower possesses operating fixed wireless links in many markets throughout the country. Additionally, FiberTower currently operates *networks* (where fixed wireless systems tie to lit or dark fiber networks and also tie to commercial customer hub locations) in thirteen major U.S. markets. In its current networked markets, FiberTower is often regarded as an alternative to the incumbent local exchange carrier (LEC) for the provision of transport services.[2] LECs continue to own a 90% market share for backhaul

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[1] *See Implementation of Section 224 of the Act; Amendment of the Commission's Rules and Policies Governing Pole Attachments*, Notice of Proposed Rulemaking, 22 FCC Rcd 20195 (2007) ["*NPRM*"].

[2] New Paradigm Research: Fixed Wireless Carriers Report (2006).

services in the U.S.[3] At a vast majority of U.S. cell sites, the LEC continues to be the only backhaul provider available for mobile carriers.[4]

FiberTower counts six of the top eight U.S. mobile carriers as its backhaul customers. One mobile carrier secures backhaul services from FiberTower in all of FiberTower's current network markets, while three others secure services from FiberTower in nine. We expect the other carriers, which are relatively new to the market, to purchase more services from FiberTower in the remainder of 2008. Reasons cited by these mobile carriers for securing backhaul services from FiberTower include the following: 1. lower cost (compared to the LEC); 2. an aversion to paying the LEC (those not attached to a parent LEC and those who do not want to pay a LEC competitor) and 3. more flexibility and reach due to its wireless nature and near-nationwide spectrum assets.

FiberTower has agreements to serve as the fixed wireless services partner to two of the three winners of the General Services Administration (GSA) *Networx Universal* Contract.[5] The primary contractors chose FiberTower for these Government deployments for a variety of reasons, including its capacity to provide government-grade wireless fiber extensions, path diversity and primary access service throughout the country. *Networx* is the largest telecommunications contract in US history. GSA issued

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[3] Light Reading Research Panel: "Bringing Broadband Backhaul to the Cell Site," moderated by Greg Brown, Atlanta (April 26, 2006).

[4] "Sprint Nextel said the $67 billion merger would result in AT&T holding a dominant position in the special-access market, which includes high-capacity circuits that connect cellular sites to switches...Notably, while these companies (LECs) alone account for 82 percent of special access (i.e. backhaul) nationwide, it is more telling that each has a virtual monopoly for these services in the local territories." *Sprint Nextel Wants AT&T/Bell South Conditions*, MultiChannel News (June 5, 2006).

[5] *See* GSA website at: http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentType=GSA_OVERVIEW&contentId=16100. *See also* Bob Brewin, "Defense Plans to Be a Big User of GSA's Networx Contract," Government Executive (May 30, 2007) http://govexec.com/dailyfed/0507/053007bb1.htm.

Networx contract awards in March 2007 (*Networx Universal)* and May 2007 (*Networx Enterprise*). Fixed wireless figures prominently in the contract.[6]

FiberTower utilizes its near-nationwide wide-area license spectrum assets, which include: more than 600 (100 MHz-wide) licenses in the 38.6-40.0 GHz band (commonly referred to as the "39 GHz band");[7] and wide-area licenses in the 24 GHz band that cover all the Top 77 U.S. markets. The FiberTower wide-area license footprint covers 99% of the nation and over 284 million people.

Since backhaul is heavily dependant on tower access, FiberTower counts the two largest U.S. tower operators as strategic partners. Crown Castle, with 22,000 towers nationwide[8], is FiberTower's largest investor and is represented on FiberTower's board of directors. American Tower (22,000 towers nationwide[9]) is also an investor. FiberTower has approximately 215 employees. More detailed information regarding the backhaul industry in general and FiberTower's operations is available at www.fibertower.com.

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6 *See GSA Networx Program Update* by Lt. Gen. Charles E. Croom, Director, Defense Information Systems Agency, and Fred Schobert, Networx Program Manager, FAS Integrated Technology Services, (January 3, 2007) at Slide 18: http://www.gsa.gov/gsa/cm_attachments/GSA_DOCUMENT/2007FASNetworxProgramUpdate_R2BVF-h_0Z5RDZ-i34K-pR.pdf

7 FiberTower also holds 177 80 MHz licenses for spectrum between 24.25-24.45 GHz and 25.05-25.25 GHz, commonly referred to as 24 GHz spectrum.

8 Crown Castle Investor Presentation (June 2007) http://www.crowncastle.com/investor/presentations/RaymondJamesConferenceMarch2007.pdf

9 American Tower Investor Presentation (June 2007) http://library.corporate-ir.net/library/98/985/98586/items/248823/Deutsche2007.pdf

Pole Attachments are directly related to both carriers and end user customers achieving access to broadband connectivity. The FCC stated in the NPRM its goal to understand how pole attachments "affect the expansion of broadband Internet access service."[10] FiberTower possesses spectrum licenses throughout the U.S., and a warehouse system that allows equipment to be shipped anywhere in the U.S. Mobile carrier customers seek to use FiberTower to assist them in deploying backhaul, that in turn allows them to offer broadband mobile wireless to their end users. Likewise, Government agencies seek:

- broadband,
- backbone connections for first responder networks,
- primary transport connections to their facilities in both underserviced metro and rural areas, and
- redundant and physically diverse connectivity to their building-based facilities, in order to comply with government standards for physically diverse networks.[11]

Such access is predicated on the ability to combine:

1. licensed spectrum,
2. line-of-sight,
3. radio transceiver equipment, and

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[10] *NPRM* at para. 5.

[11] *See,* The Consolidated Appropriations Act, Fiscal Year 2005, Public Law 108-47, 118 Stat. 3260, Div. H, Title IV, § 414 (2004). *See also,* Office of Management and Budget, Memorandum for the Heads of Departments and Agencies, M-05-16 (June 30, 2005); *and* FEMA, Federal Preparedness Circular, FPC 65.

4. physical sites upon which to deploy the fixed wireless equipment, either for direct links or for repeater links.

Advancements in fixed wireless system design are presenting operators with the ability to deploy smaller, lower profile systems. Millimeter band systems now exist in the 24 GHz and other bands with outdoor units and antennas that approximate 9-inches by 9-inches. Even in bands, like 10.6-11.6 GHz, where outdoor units and antennas traditionally proved quite heavy and sizeable, the FCC has recognized and approved licensing for 2-foot antennas.[12] *These developments indicate that broadband wireless can now be installed much more easily and surgically onto many structures heretofore too ungainly to consider, including on poles, ducts, conduits and rights-of-way that utilities control.*

The Supreme Court made it clear in *Gulf Power* that the FCC possesses the authority to provide wireless telecommunications operators the ability to enjoy pole attachments, along with their wireline telecommunications and cable brethren.[13]

> "The Act's text is dispositive. It requires FCC regulation of a pole attachment, §224(b), which is defined as "any attachment by a...provider of telecommunications service," §224(a)(4). "Telecommunications service," in turn, is defined as the offering of telecommunications to the public

[12] See, Amendment of Part 101 of the Commission's Rules to Modify Antenna Requirements for the 10.7 – 11.7 GHz Band & Nextlink Wireless, Inc., First Avenue Networks, Inc., Telecom Transport Management, Inc., Conterra Ultra Broadband, LLC Petitions for Waiver of Sections 101.103 and 101.115 of the Commission's Rules for the Use of Smaller Antennas in the 10.7-11.7 GHz Band, *Report & Order* (WT Docket No. 07-54 RM-11043) (Adopted: September 7, 2007).

[13] *See, Nat'l Cable & Telecommunications Ass'n v. Gulf Power*, 534 U.S. 327, 341 (2002) ["*Gulf Power*"]; *Implementation of Section 703(e) of the Telecommunications Act of 1996*, Report and Order, 13 FCC Rcd 6777, 6798-99 (1998). .

> for a fee, "regardless of the facilities used." §154(46). A provider of wireless telecommunications services is a "provider of telecommunications service," so its attachment is a "pole attachment." Respondents' attempt to seek refuge in §§224(a)(1) and (d)(2) is unavailing, for those sections do not limit which pole attachments are covered and thus do not limit §224(a)(4) or §224(b)."

The question now is; Does a basic formula and policy exist that allows for efficient access for broadband wireless equipment to poles, ducts, conduits and rights-of-way? Yes. *All service providers, be they cable, wireline or wireless should be afforded efficient pole attachment access utilizing a uniform formula that charges the operator for the space they use or make unusable.*

The FCC seeks comment on whether the bargaining power that exists between electric utilities and incumbent LECs could affect pole attachment rates and the "vitality of competition" to deliver broadband and other services.[14] Certainly. Also, if utilities and ILECs construe *Southern Co. v. FCC,* 293 F.3d 1338 (11th Cir. 2002) to allow utilities to avoid making expanded pole attachment capacity available for attachers as utilities would for themselves, then the danger certainly exists for ILECs to simply use their bargaining power to usurp pole attachment space in bottleneck locations. Such an outcome could impact broadband deployment, competitive alternatives, and the ability for agencies and organizations to access physically diverse networks in accordance with the federal standards.

[14] *NPRM* at para. 6.

In conclusion, the FCC possesses in the instant rulemaking the opportunity to facilitate the roll-out of broadband with the same robustness and scope as the cable industry enjoyed when it first availed itself of rules that allowed for the methodical and uniform access to pole attachments. FiberTower requests that any further action on the *NPRM* be taken in a manner consistent with the comments set forth above.

Respectfully submitted,

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